IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

Crl.Rev.Pet.No. 1108 of 1999(C)

CRL.A.68/1996 OF ADDL.SESSIONS COURT, THODUPUZHA,
SC.5/1994 OF ASSISTANT SESSIONS COURT, KATTAPPANA.

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PETITIONER/APPELLANT/ACCUSED:

ROYCHAN, S/O. ISSAC,
CHERUTHANICKAL VEEDU,
MATTUTHAVALAM BHAGOM,
UPPUTHARA VILLAGE,
PEERMADE TALUK.

BY ADV. SRI.V.V.RAJA,
SRI.M.T.SURESHKUMAR.

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY THE
PUBLIC POSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. AMJAD ALI.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 21/06/2007,THE COURT ON 26/09/2007 PASSED THE FOLLOWING:

prv.

ORDER ON CRL.M.P. NO. 5119/1999 IN CRL.R.P. NO. 1108/1999

DISMISSED

26/09/2007. **SD/- K.R.UDAYABHANU, JUDGE.**

//TRUE COPY//

prv.

K.R. UDAYABHANU, J.

CRL.R.P.NO. 1108 OF 1999

DATED THIS THE 26TH SEPTEMBER 2007

ORDER

The revision petitioner is the accused in S.C.No.5/1994 (Crime No.56/1993 of Upputhara police station) who stands convicted for the offence under Section 376(1)I.P.C. and sentenced as modified by the appellate court to undergo rigorous imprisonment for four years and to pay a fine of Rs.10,000/- and in default to undergo rigorous imprisonment for one year.

2. It is the prosecution case that on 4-12-1992 at about 5 p.m. while the Prosecutrix Shailaja @ Lissamma on her way back home returning from the school wherein she was a student in the 7th standard and when she reached near Achaithandu plantation, the accused took her by force inside the plantation and ravished her without her consent and she became pregnant. The evidence is that she has given birth to a child.

3. The prosecution evidence consisted of the testimony of

Pws.1 to 12 and Exts.P1 to P11. The defence examined Dws.1 and 2, the Doctors and got marked Ext.D1 portion of the C.D. statement of PW4.

4. PW1 the victim who was allegedly aged less than 16 at the time has testified as to the events that culminated in the F.I.S. It is the version that when she was walking through the pathway inside the plantation, the accused came from opposite direction and directed her to stop and then just asked her whether she can provide for him and then caught hold of her hand and forcibly took her into the plantation and that when she cried for help he closed her mouth and she was made to surrender under force and threat and he committed rape against her will. She has also stated that she has given birth to a child and the child is alive. PW4, the father of the victim has testified that it was his wife who informed him about the pregnancy of the daughter and then he learnt from her that on 4-12-1992 while she was returning form the school she was raped and she was threatened that in case she revealed the

matter, herself and her parents would be done to death. Pws.8 and 9, the witnesses who were examined in support of the prosecution version turned hostile. They were sought to be examined to prove that at the instance of the accused they have gone to the house of PW4 along with the accused to enquire about the talk among the people that the accused has committed rape on PW1. They turned hostile and Exts.P8, P9 and P10 are the portions of the C.D. statement put to them by the Public Prosecutor. I find that the above prosecution witnesses even otherwise serves no purpose that even as per the C.D. statement of the above witnesses the accused has denied his involvement. PW3, the Headmaster of Cheenthalar High School who issued Ext.P3 age certificate of the victim has testified in proof of the same. Ext.P10 is the age certificate which has been issued on the basis of date of birth incorporated in the admission register wherein the date of birth is mentioned as 20-4-1977. The same would show that the prosecutrix was aged only 15 years, 7 months and 14 days. Ext.P11 is the photocopy of the

extract of the school admission register which was sought to be proved through the investigating officer. Ext.P11 being an unattested Photostat copy, the appellate court did not rely the same; and rightly so. All the same, the evidence of PW3 as to the genuineness of the school admission register stands not discredited. In the cross examination, PW4 has testified that he came to know of the incident only on 24-5-1993 and that in the night the accused, PW8 and one Pappa came to his house and suggested that they can get the pregnancy aborted. He told them that they shall let them know about it on the next day. Ext.D1 C.D.portion put to him is to the effect that on her way to the the school, the accused used to follow her and used to give toffee and had promised to marry her and used to press her breasts while passing through the forest area and that on 4th December he took her to the plantation and sat there for sometime and while talking she was asked to lie down and when she refused, he used force and committed rape. He has denied the above portion. It was also brought out that there was a

delay of four days in informing the police. PW4 has stated that the same was occasioned on account of the fact that they were living inside the forest and thought that the matter can be settled somehow. (The date of F.I.s.on 29-4-1993 at 12.30 noon, he has also admitted that a complaint was submitted before the police which was written by one Rajan. He has stated in the cross examination that the accused had asked one Shaji and Manikyan to give some tablets to PW1 and it is from them that the wife of PW4 came to know of the pregnancy of the daughter. PW6 is the Doctor attached to Government Primary Health Centre,Upputhara who has stated that he examined PW1 on 29-4-1993 and that it was found that she is pregnant by 20 to 22 weeks. He has proved Ext.P2 certificate in this regard wherein it is mentioned that the allegation of rape is hat it took place 5 months ago. PW7, the Civil Surgeon attached to the Taluk Headquarters Hospital, Peermade has proved Ext.P6 potency certificate of the accused which was issued when he examined the accused on 8-9-1993 at the instance of the police.

The age of the accused mentioned therein is 23 years. DW1, the Gynecologist of Taluk Headquarters Hospital, who was examined at the instance of the accused has testified that the period of pregnancy is 280 days from the last menstrual days and 266 days from the date of conception. He has also stated that from the date of the intercourse on 4-12-1992 the expected date of delivery would be some where in August 1993. DW2, the Civil Surgeon of P.H.C.Kattappana had brought the birth register of the hospital and has stated that the name of PW1 is not noted in the above register during the period from 15.7.1993 to 15-8-1993. He has stated that Sujatha, C/o.Roychan (name of the accused) was under treatment after delivery in the hospital and that she was admitted on 31-7-1993. The date of delivery according to the prosecution is 27-7-1993. It is the contention through out that in case she was subjected to rape on 4-12-1992 and that she has given birth to a full grown baby on 27-9-1993 and that if calculated from the alleged date of rape the total days till the date of delivery would work out to only 236

days. The trial court relying on MODI's Medical Jurisprudence and Texicology, 21st Edition, page 400 has noted that in an exceptional cases even after 210 days gestation full grown child birth has taken place. I find that as to the details of the growth of the child at the time of delivery is not available. In the circumstances, I am inclined to agree with the trial court finding in this regard.

5. The other contention is that the fact brought out in the cross examination of PW1 that she had menstruation after 3 or 4 days of the alleged rape and hence it was impossible that she would have conceived on account of the rape that took place before menstruation was also turned down relying on the the recitals in on page 358 of the above cited MODi's Medical Jurisprudence wherein it is mentioned that in rare cases menstruation may occur for upto three periods after consumption.

6. PW1 has also admitted that the accused had intercourse

with her again after two days, inside the plantation. Accoridng to her, she was made to submit at his assurance that he shall marry her. The above version brought out would not help the accused as it is established that she was aged less than 16.

7. It is the contention before the courts below that the earlier complaint filed by the victim before the Circle Inspector of Police, Peerumedu was suppressed. The F.I.R. in the instant case was registered on the basis of the statement of PW1. The above complaint was found in the C.D. file. PW12, the Sub Inspector who registered the F.I.R. has only acted on the F.I.S. of PW1. He had not received the complaint filed by PW1 and PW4 before the Circle Inspector of Police. He has explained that as the case has been registered on the basis of the statement of PW1, no action was taken on the complaint filed before the Circle Inspector. It was suggested to PW1 that the allegation in the above complaint is that the rape took place in January 1993 and hence the above document was suppressed. But PW1 has denied that she had mentioned therein that the rape was

committed in January. Of course, PW12 has admitted that in the above complaint the allegation is that sometime in January the rape was committed. The trial court has rightly found that there is nothing to show that the complaint filed before the Circle Inspector of Police was received by PW2 before recording the F.I.S. given by PW1. The court has also noted that PW4, the father of the victim who submitted the complaint, was not cross examined with respect to the above complaint. Moreover, PW11, the Circle Inspector of Police, Peerumedu when cross examined was also not asked anything about the above complaint.

8. As noted by the trial court, Pws.1 and 4 are poor illiterates residing at the Hill-tracts in a remote village. It has been established that the prosecutrix at the time of the alleged rape was under 16 years of age. Hence, in view of clause sixthly of Section 376, the issue of consent does not arise. I find that the findings of the courts below as to the guilt of the accused under Section 376 I.P.C. stands proved. The conviction is

confirmed.

9. Counsel for the revision petitioner has pleaded for leniency pointing out that about 14 years have elapsed since the commencement of the proceedings and that so far the revision petitioner/accused was facing the ordeal of criminal proceedings and living under the shadow of impending sentence of imprisonment and that the accused was rather than young i.e. 23 years, on the date of occurrence. All the same, I find that the gravity of the offence cannot be overlooked. In the circumstances, the sentence is modified to undergo simple imprisonment for four months and to pay a fine of Rs.One lakh and in default to undergo simple imprisonment for one year. The fine amount, if realised shall be paid to PW1. The Crl.revision petition is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

ks.

K.R.UDAYABHANU, J

CRL.R.P. NO. 1108 of 1999

ORDER

13-9-2007